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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 787

CITY OF EAST DETROIT, a Municipal Corporation, Aloysius L. Kapelczak, James E. Anderson, George S. Stone, Sr., Edward J. Bonior and Donald G. Tarnowski, as the Mayor and Common Council of said City and the Board of Appeals on Zoning of said City, and Charles H. Beaubien, as City Clerk and City Manager,
Petitioners and Defendants,

vs.

THE DETROIT EDISON COMPANY,
a New York Corporation,
Respondent and Plaintiff

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT and APPENDIX

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Petitioners and Defendants,

vs.

THE DETROIT EDISON COMPANY,
a New York Corporation,
Respondent and Plaintiff

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals

for the Sixth Circuit, entered in the above entitled cause on December 14, 1959.

(A) OPINIONS BELOW

The opinion of the United States Court of Appeals, Sixth Circuit, appears in 272 F. 2nd 410. A copy of the judgment and opinion of the Court are attached hereto as appendix.

The Findings of Fact and Conclusions of Law and the opinion of the Honorable Arthur F. Lederle, District Judge for the Eastern District of Michigan, Southern Division are not attached being contained in copies of the Joint Appendix printed for the United States Court of Appeals, Sixth Circuit, nine copies of which have been filed with this Court. Rule 21 (4).

(B) JURISDICTION

(i) This suit was brought by plaintiff, The Detroit Edison Company, a New York Corporation, against petitioners, a Michigan Municipal Corporation and its officers, solely on the basis of diversity of citizenship under 28 United States Code, Section 1332.

(ii) Jurisdiction of this Court to issue a writ of certiorari is conferred by 28 United States Code 2101 (c).

The Court of Appeals for the Sixth Circuit affirmed on December 14, 1959, the judgment of the United States District Court, Eastern District of Michigan, Southern Division.

(C) QUESTIONS PRESENTED FOR REVIEW

I.

WITHOUT A DECISION OF A STATE COURT SHOULD AND DID A FEDERAL COURT INTERPRET CORRECTLY "TRANSMISSION SYSTEMS" TO INCLUDE A 300' x 600' TRANSFORMER STATION WITH 30 FOOT HIGH TOWERS WITHIN THE "ESSENTIAL SERVICES" SECTION OF A LOCAL ZONING ORDINANCE SO AS TO PERMIT SAID TRANSFORMER STATION TO BE BUILT IN AN AREA ZONED AND LIMITED TO SINGLE FAMI RESIDENCE?

II.

ASSUMING THAT A TRANSFORMER STATION IS WITHIN THE TRANSMISSION SYSTEMS OF "ESSENTIAL SERVICES" SHOULD A FEDERAL COURT ENFORCE THAT PROVISION OF A LOCAL ZONING ORDINANCE WHICH EXCEPTS "ESSENTIAL SERVICES" ENTIRELY FROM ZONING SO THAT IT MAY BE PLACED IN ANY AREA OF A CITY EVEN WHEN IT HAS BEEN ZONED SINGLE FAMILY RESIDENTIAL WITHOUT A DECISION OF A STATE COURT APPROVING BLANKET ZONING EXEMPTIONS FOR UTILITIES, PARTICULARLY WHEN THE U. S. COURT OF APPEALS HAS AFFIRMED A DECISION WHICH DECIDED AN IMPORTANT STATEWIDE QUESTION IN A WAY WHICH PROBABLY WOULD BE IN CONFLICT WITH THE STATE LAW IF THE STATE COURTS HAD BEEN INVOKED TO ADJUDICATE THIS PARTICULAR ISSUE?

(D) STATUTES AND ORDINANCES

Statutory and ordinance provisions connected with the issues are referred to below. Being too lengthy to set forth here in full, the pertinent text appears in appendix, page 13 attached hereto.

Public Acts of Michigan for 1921, No. 207, Page 402, and following, as amended, being M. S. A. 5.2931-5.2940.

AN ACT to provide for the establishment in cities and villages of districts or zones within which the use of land and structures, the height, the area, the size and location of buildings may be regulated by ordinance, and within which districts regulations shall be established for the light and ventilation of such buildings, and within which districts or zones the density of population may be regulated by ordinance; to provide by ordinance for the acquisition by purchase, condemnation or otherwise of private property which does not conform to the regulations and restrictions of the various zones or districts so provided; to provide for the administering of this act; to provide for amendments, supplements or changes hereto; to provide for conflict with the state housing code or other acts, ordinances or regulations; to provide penalties for the violation of the terms hereof and to give immediate effect thereto.

Ordinance No. 260, being the official Zoning Ordinance of the City of East Detroit.

(E) STATEMENT OF THE CASE

June 24, 1957, the City of East Detroit, Macomb County, Michigan, adopted a Zoning Ordinance, known as "Ordinance No. 260."

Plaintiff secured options and exercised its right to acquire in fee simple title to the following described real estate:

> "Lots 51 through 58, both inclusive, Assessor's Plat of Stricker's Small Farm Subdivision, East Detroit, Macomb County, Michigan."

Pursuant to the zoning ordinance, this real estate was zoned "R-1 ONE FAMILY RESIDENTIAL DISTRICTS", permitting one family dwellings.

No covenants or restrictions running with the land have been recorded.

The Assessor's Plat of Stricker's Small Farm Subdivision consists of 58 platted plots. Forty-two (42) residential houses occupy forty-four (44) of the 58 platted lots; there are 13 vacant lots, and one lot has constructed thereon a one-story building containing 6 utility apartments.

Plaintiff desires to utilize the Lots 51 through 58 of said residential subdivision for a central transformer station into which will be sent high voltage electric current of approximately 120,000 volts, which, in turn, will be reduced to approximately 24,000 volts and transmitted to various sub-stations, which, in turn, will reduce the voltage to 4800 volts and in turn transmit the current to individual transformer devices customarily suspended on poles in the area to be served thereby and commonly known as "distribution transformers", which distribution transformers then transmit the electricity to the ultimate users at approximately 120/240 volts. The proposed transformer station shall encompass an area approximately 600 feet long by 300 feet wide and be surrounded in part by a wall 12 feet high facing on a residential street and 16 feet high on a through street. The supporting towers will be approximately 30 feet above ground level. Plaintiff will have approximately $3,500,000 invested in this transformer station.

Plaintiff did not apply for an amendment to the R-1 Zoning because it contended that said ordinance in Art. IV "General Provisions", sec. 4.14 "Essential Services" reads:

> "• • • it being the intention hereof to except such essential services from the application of this Ordinance."

Plaintiff interpreted the words "Essential Services" by application of Art. II "Definitions", sec. 2.20 "Essential Services" to include its transformer plant to be permissible in this R-1 one-family residential district because the zoning ordinance reads:

> "The phrase 'essential' services means the erection, construction, alteration or maintenance by public utilities or municipal department or commission of underground or surface or overhead gas, electrical, communication, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, and other similar equipment and accessories in connection therewith (but not including buildings) reasonably necessary for the furnishings of adequate service by such public utilities or municipal departments or commissions for the public health, safety or general welfare."

Believing that a transformer station is within the "transmission or distribution system" phrase of the definition of "essential services", and not within the purvey of the zoning ordinance, no application for a zoning permit to comply with zoning was made. However, since the instruments controlling the transformer station should be housed in a "building" and the definition of "essential services" expressly excluded "buildings", on December 17, 1956, plaintiff filed a request with the Planning Commission for a permit to erect what it described as "a control shelter or container on such site as a part of said transformer station", in accordance with the Zoning Ordinance, Art. XIII "City Planning Commission Approval" Sec. 13.04 (c) which reads:

> "PUBLIC UTILITY BUILDING ERECTION OR ENLARGEMENT. Permit the erection and

use of a building, or an addition to an existing building of a public service corporation to be used for public utility purposes, in any permitted district to a greater height or of a larger area that the district requirements herein established, and permit the location in any use district of a public utility building structure, or use, providing the Planning Commission shall find such use, height, area, building or structure reasonably necessary for the public convenience and service, and provided, further, that such building structure, or use is designed, erected and landscaped to conform harmoniously with the general architecture and plan of such district."

February 6, 1958, the Planning Commission did not reach a decision because of a tie vote and referred the plaintiff's request to the Zoning Board of Appeals.

March 3, 1958, the Zoning Board of Appeals approved the request of the plaintiff.

May 12, 1958, the Board of Appeals on Zoning held a rehearing and denied the permit heretofore granted plaintiff on March 3, 1958.

June 11, 1958, the Detroit Edison Company, a New York Corporation, filed its action against defendants of Michigan citizenship in the United States District Court.

November 10, 1958, the Honorable Arthur F. Lederle, signed a decree for plaintiff, stating in effect that the Board of Appeals on Zoning had no jurisdiction to grant a rehearing (with which these petitioners fully agree as an accurate statement of the Michigan law) but also held that the word "transformer" was included in "essential services" of sec. 2.20 of the Zoning Ordinance and, therefore, was exempt entirely from any zoning whatsoever.

December 14, 1959, the United States Court of Appeals affirmed the United States District Court.

REASONS FOR GRANTING THE WRIT

I. Supreme Court Rule 19:

> "Considerations governing review of certiorari indicates that one of the reasons which will be considered for the purpose of granting certiorari is where a Court of Appeals has decided an important state or territorial question in a way in conflict with applicable state or territorial law."

Petitioners believe that the United States Court of Appeals has affirmed a decision which decided an important state question thereby promulgating a rule which would be in conflict with the state law if the state law had heretofore decided this particular issue or, if a state court had been invoked to adjudicate this question.

The issue in this case is much more serious than the interpretation of one isolated section of a local zoning ordinance by a federal court.

The question of interpretation is whether or not a 300 x 600 foot transformer station may be built within a one-family residential district because a "transformer station" is included in the definition of "Essential Services" of sec. 2.20, Art. II, City of East Detroit's Zoning Ordinance, No. 260.

Much more serious is the *result* of the interpretation by the lower courts that a "transformer station" is included within the "essential services" phrase of the zoning ordinance: is it possible to *exempt* a transformer station completely from zoning so that a privately-owned utility may purchase land in any area within a municipality despite the fact that the land had been heretofore zoned residential and that said public utility without permission

of the City or anyone else erect a 300 x 600 foot transformer with 30 foot high towers despite said residential zoning?

Actually this is "spot zoning" by a federal court decision much more aggravated than the illegal "spot zoning" of city councils declared illegal by state courts.

2. While not heretofore raised in either the U. S. District Court or in the U. S. Court of Appeals, petitioners contend that a crucial issue of Michigan law is presented; hence should not this action be stayed until a declaratory judgment action in the Michigan State Courts defines the statutes and ordinances of the State and Cities of Michigan pertaining to this point involving zoning? This federal litigation is based solely on diversity and has resulted in a rule of local law probably in defiance of future local law. Zoning is peculiarly local. While not within the generalization of an "estate in land" zoning is related to land use and land values. The rule of *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478 (1940) should be extended to cover the instant litigation, particularly when a state court action was pending but became "moot" upon the revocation of the permit by the Zoning Board of Appeals, one reason therefore being that the Detroit Edison Company had purchased the real estate owned by two of the three plaintiffs in the state court action.

While the federal courts had jurisdiction in the *strict* sense, should not this action be deferred until the interpretation of a city's zoning ordinance be made by the Michigan State Courts?

Other local matters of law *not decided* by a state court are also involved herein:

A. Permitting "essential services" of this type is contra to P. A. 1921, No. 207, The City Zoning Act, which by state legislative fiat enables a city to divide its territory into zoning districts, sec. 3 thereof (M. S. A. 5.2933) reading:

> "Such regulations shall be uniform throughout any specified district but may differ from the regulations adopted for other districts."

To permit a "transformer station" to be placed in a residential zone at the whim of a privately-owned public utility violates the uniformity requirement.

B. Unprecedented local administrative procedure was employed and approved by the federal courts.

February 6, 1958, the Planning Commission could not agree (because of tie votes) and referred the matter to the City Council.

March 3, 1958, the City Council sitting as a "Board of Appeals on Zoning" approved the construction of the control house for the transformer station.

It is impossible for a Board of Appeals on Zoning to act as an appellate body from the Planning Commission. Its duties are specified in the City Zoning Act, (P. A. 1921, No. 207, Sec. 5, being M. S. A. 5.2935).

Moreover, the Plan Commission did not grant a permit for the "control" building. Assuming the City's Zoning Ordinance, sec. 13.04 (c) required a permit from the Plan Commission, obviously it was *not* the Plan Commission but the "Board of Appeals on Zoning" which granted the permit on March 3, 1958. The Board of Appeals therefore exercised a power reserved to the Plan Commission. Whether or not it granted a rehearing and thereby revoked the permit hence becomes immaterial. It could not revoke

an act which it had no jurisdiction or power to do in the first instance.

C. A change in use of land results in constructing a transformer station in an "R-1" zoned district. A change in use of this nature requires an amendment to the zoning ordinance by the City Council. Mere approval of an administrative group such as a planning commission is an illegal delegation of legislative power. Moreover, this is not within the jurisdiction of a planning commission, the source of its powers being found solely and exclusively in the City Zoning Act, (P. A. 1921, No. 207, Sec. 4, being M. S. A. 5.2934) which confers upon a city plan commission the right to recommend and report as a condition precedent to the city council *amending* the zoning ordinance. The Plan Commission of a city has no power to amend a zoning ordinance. Only the city council can amend zoning legislation.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

CITY OF EAST DETROIT, a Michigan municipal corporaion, Aloysius L. Kapelczak, James E. Anderson, George S. Stone, Sr., Edward J. Bonior and Donald G. Tarnowski, as the Mayor and Common Council of said City and the Board of Appeals on Zoning of said City, and Charles H. Beaubien, as City Clerk and City Manager,

Petitioners,

By: ROBERT E. CHILDS,
Its Special Counsel.

March 9, 1960.

APPENDIX A

STATUTES AND ORDINANCES

Public Acts of Michigan for 1921, No. 207, Page 402, and following, as amended, being M. S. A. 5.2931-5.2940.

AN ACT to provide for the establishment in cities and villages of districts or zones within which the use of land and structures, the height, the area, the size and location of buildings may be regulated by ordinance, and within which districts regulations shall be established for the light and ventilation of such buildings, and within which districts or zones the density of the population may be regulated by ordinance; to provide by ordinance for the acquisition by purchase, condemnation or otherwise of private property which does not conform to the regulations and restrictions of the various zones or districts so provided; to provide for the administering of this act; to provide for amendments, supplements or changes hereto; to provide for conflict with the state housing code or other acts, ordinances or regulations; to provide penalties for the violation of the terms hereof and to give immediate effect thereto.

Sec. 3, being M. S. A. 5.2933:

[5.2933] Regulation of congested areas. Sec. 3. The legislative body of cities and villages may limit and restrict the maximum number of families which may be housed in dwellings hereafter erected or altered, and for such purposes divide any city or village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section. Such regulations must be uniform throughout any specified districts, but may differ from the regulations adopted for other districts. Such regula-

tions shall be designed to limit the overcrowding of land, to avoid undue congestion of population, to facilitate adequate provisions for a system of transportation, sewage disposal, water, education, recreation and other public requirements, and to promote public health, safety and general welfare. (C. L. '48, §125.583; C. L. '29, §2635.)

Sec. 4, being M. S. A. 5.2934:

§5.2934] Ordinances, enactment; hearing, notice; commission, appointment, proceedings, report; protest, effect. Sec. 4. The legislative body of any city or village may provide by ordinance for the manner in which such regulations and boundaries of districts or zones shall be determined and enforced, or from time to time amended, supplemented or changed: Provided, however, That a public hearing shall be held before any such regulations shall become effective: And provided further, That not less than 15 days' notice of the time and place of such public hearing shall first be published in an official paper or a paper of general circulation in such city or village, [and that not less than 15 days' notice of the time and place of such public hearing shall first be given by registered United States mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the districts or zones affected,] and a hearing be granted any person interested at the time and place specified. In cities having a population of 25,000 or more according to the last federal or state census, the legislative body may appoint a commission to recommend in the first [1st] instance the boundaries of districts and appropriate regulations to be enforced therein. Such commission shall thereupon make a tentative report and hold public hearings thereon at such times and places as the legislative body shall require before submitting its final report. In cities having a population of 25,000 or more according to the last federal or state census,

said legislative body shall not in the first [1st] instance determine the boundaries of districts nor impose regulations until after the final report of a commission so appointed. In cities having a population of 25,000 or more according to the last federal or state census, the hearing as above provided before the legislative body shall not take place until such final report of such commission has been received, nor shall the ordinance or maps be amended after they are adopted in the first [1st] instance until the proposed amendment has been submitted to such commission and it has made report thereon. In either case the legislative body may adopt such ordinance and maps with or without amendments, or refer same again to the commission for a further report. Where a city has a city plan commission or corresponding commission the legislative body may appoint such commission to perform the duties above specified. After the ordinance and maps have in the first [1st] instance been approved by the legislative body of a city or village, amendments or supplements thereto may be made from time to time as above provided, but in case a protest against a proposed amendment, supplement or change be presented, duly signed by the owners of 20 per centum or more of the frontage proposed to be altered, or by the owners of 20 per centum or more of the frontage immediately in the rear thereof, or by the owners of 20 per centum of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by the three-fourths [¾] vote of such legislative body. (C. L. '48, §125.584; C. L. '29, §2636.)

Sec. 5, being M. S. A. 5.2935:

§5.2935 Objections and appeals.] Sec. 5. Board of appeals.] (a) The legislative body of any city or village may act as a board of appeals upon all questions arising under a zoning ordinance, and in such event the said legislative body may fix rules and regulations to govern its procedure sitting as such a board of ap-

peals. In the event that the legislative body of any city or village so desires, it may appoint a board of appeals consisting of not less than 5 members, each to be appointed for a term of 3 years: Provided, That appointments for the first year shall be for a period of 1, 2 and 3 years, respectively, so as nearly as may be to provide for the appointment of an equal number each year, depending on the number of members, thereafter each member to hold office for the full 3 year term. Such board of appeals shall hear and decide appeals from and review any order, requirement[s], decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to the provisions of this act. They shall also hear and decide all matters referred to them or upon which they are required to pass under any ordinance of the legislative body adopted pursuant to this act. The concurring vote of 2/3 of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which they are required to pass under any such ordinance or to effect any variation in such ordinance. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the city or village. Wherever any city or village has created or may create a board of rules or board of building appeals, such board may be enlarged to consist of not less than 5 members, and these may be appointed as the board of appeals as herein provided.

Appeals, how taken.] (b) Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by the filing with the officer from whom the appeal is taken and with the board of appeals of a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board, all the papers constituting the record upon which the action appealed from was taken.

Stay.] (c) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by the circuit court, on application, on notice to the officer from whom the appeal is taken and on due cause shown.

Hearing and decision upon appeal.] (d) The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to [all persons to whom any real] property within 300 feet of the premises in question [shall be assessed], such notice to be delivered personally or by mail addressed to the respective owners at the address given in the last assessment roll, and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of appeals may reverse or affirm, wholly or partly, or [may] modify the order, requirement, decision or determination appealed from and s'all make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, the board of appeals shall have power in passing upon appeals to vary or modify any of its rules, regulations or provisions relating to the construction, structural changes in equipment, or alteration of buildings or structures, or the use of land, buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured and substantial justice done. The decision of such board shall not become final until the expiration of 5 days from the date of entry of such

order unless the board shall find the immediate effect of such order necessary for the preservation of property or personal rights and shall so certify on the record. The legislative body of any city or village may authorize the payment of not to exceed $5 per member[s] for attendance at regular meetings of such boards: Provided, That the foregoing limitation on payments to members shall not apply in any city now or hereafter having a population of [90,000] or more as determined by the last federal decennial census or by any federal decennial census hereafter taken.

(C. L. '48, §125.585; C. L. '29, §2637.)

Ordinance No. 260, being the official Zoning Ordinance of the City of East Detroit:

ORDINANCE No. 260

OFFICIAL ZONING ORDINANCE OF THE CITY OF EAST DETROIT

Article II

DEFINITIONS

Section 2.08 *Building.* Any structure either temporary or permanent, having a roof and used or built for shelter or enclosure of persons, animals, chattels, or property of any kind. This shall include tents, awnings or vehicles situated on private property and used for purposes of a building.

Section 2.20 *Essential Services.* The phrase "essential" services means the erection, construction, alteration or maintenance by public utilities or municipal department or commission of underground or surface or overhead gas, electrical, communication, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, and other similar equipment and accessories in connection therewith (but not including buildings) reasonably necessary for the furnishings of adequate service by such public utilities or

municipal departments or commissions for the public health, safety or general welfare.

Section 2.56 *Use.* The purpose for which land or buildings thereon are designed, arranged, or intended to be occupied or used, or for which they are occupied or maintained.

Article IV

GENERAL PROVISIONS

Section 4.01 *Application of This Article.* Except as hereinafter provided no building or land, or part thereof, located in any district as herein established shall be used, altered, constructed or reconstructed, except in conformity with the provisions of this ordinance which apply to the district in which it is located.

Section 4.14 *Essential Services.* Essential services shall be permitted as authorized and regulated by law and other ordinances, it being the intention hereof to except such essential services from the application of *this Ordinance.*

Article V

R-1 ONE FAMILY RESIDENTIAL DISTRICTS

Section 5.01 *Uses Permitted.* In all R-1 Districts no building or land, except as otherwise provided in this Ordinance, shall be erected or used except for one or more of the following specified uses:

(a) one family dwellings

. . . . . .

Article VI

R-1-P ONE FAMILY RESIDENTIAL PARKING DISTRICTS

Section 6.01 *Uses Permitted.* In all R-1-P Districts, no building or land, except as otherwise provided in this Ordinance, shall be erected or used except for one or more of the following specified uses:

(a) all uses permitted in R-1 Districts

(b) * * * public utility buildings * * * transformer stations without Service or storage yards, subject to the approval of the Planning Commission as being not injurious to surrounding neighborhood and not contrary to the spirit and purpose of this Ordinance.

* * * * * *

Article VII

R-2 TWO FAMILY RESIDENTIAL DISTRICTS

Section 7.01 *Uses Permitted.* In all R-2 Districts, no building or land, except as otherwise provided in this Ordinance, shall be erected or used except for one or more of the following uses:

(a) all uses permitted in R-1 Districts.

* * * * * *

(c) two family dwellings.

* * * * * *

Article VIII

R-3 MULTIPLE FAMILY RESIDENTIAL DISTRICTS

Section 8.01 *Uses Permitted.* In all R-3 Districts no building or land, except as otherwise provided in this Ordinance shall be erected or used except for one or more of the following uses:

(a) all uses permitted in R-2 Districts

(b) apartment houses, apartment hotels, and efficiency apartments.

* * * * * *

Article IX

PB—PROFESSIONAL BUSINESS DISTRICTS

Section 9.01 *Uses Regulations.* In all PB Districts, no building or land, except as otherwise provided in this Ordinance shall be hereafter erected or altered except for one or more of the following uses:

(a) all uses permitted in R-2 Districts.

(b) Professional offices of a doctor, lawyer, dentist, architect, engineer, or any other profession which sells professional services.

* * * * *

Article X

C—COMMERCIAL BUSINESS DISTRICTS

Section 10.01 *Uses Permitted.* In all C Districts, no buildings or land, except as otherwise provided in this Ordinance, shall be erected or used except for one or more of the following specified uses:

* * * * *

(k) PUBLIC SERVICES, including bus stations, public utility buildings, and transformer stations or sub-stations without storage yards.

Article XI

M-1 LIGHT INDUSTRIAL DISTRICTS

Section 11.01 *Uses Permitted.* In all M-1 Districts, no buildings or land, except as otherwise provided in this Ordinance, shall be erected or used except for one or more of the following specified uses:

(a) All uses permitted in C Districts.

(b) * * *

(3) Public Utility service yards or electric receiving or transforming stations.

Article XIII

CITY PLANNING COMMISSION APPROVAL

* * * * *

Section 13.02 The Planning Commission of the City of East Detroit may enter into agreements with applicants for permits which shall be binding * * * The City Planning Commission shall refuse to issue a permit to any person, firm * * * who has refused or neglected to enter * * * any agreement involving the details of this paragraph when in the opinion of the Planning Commission, such agreement is necessary.

Section 13.04. The Planning Commission shall investigate the circumstances of each case and shall notify such parties, who may in its opinion be affected thereby * * * of any public hearing * * * required by this Ordinance, and shall be satisfied that the property adjacent to the area included in the petition, will not be adversely affected, and shall conform to the limitations and restrictions specified for each of the following listed exceptions:

* * * * * *

(c) PUBLIC UTILITY BUILDING ERECTION OR ENLARGEMENT. Permit the erection and use of a building, or an addition to an existing building of a public service corporation to be used for public utility purposes, in any permitted district to a greater height or of a larger area than the district requirements herein established, and permit the location in any use district of a public utility building structure, or use, providing the Planning Commission shall find such use, height, area, building or structure reasonably necessary for the public convenience and service, and provided, further, that such building, structure, or use is designed, erected and landscaped to conform harmoniously with the general architecture and plan of such district.

Article XV

ADMINISTRATION

Section 15.02. It shall be unlawful to build or use or permit the building or the use of any structure or land or part thereof hereafter created, erected, or altered, or to change or enlarge the use of any building or land or part thereof until a zoning permit, in accordance with the provisions of this Ordinance, properly endorsed as to occupancy in a manner herein provided, shall have been issued by the Building Inspector, hereinafter authorized.

Section 15.03 *Application for Permits.* An application for a permit shall be made to the Building Inspector. Such application shall be accompanied by a plat in duplicate, drawn to scale, showing the exact dimensions of the land and structure to which the permit is to apply * * *.

Article XVI

VIOLATIONS AND PENALTIES

Section 16.01. It shall be the duty of all * * * persons having charge of establishment of any use of land, or the erection * * * of any building or structure, * * * before beginning * * * such work to see that a proper permit has been granted therefore, and that such work does not conflict with and is not in violation of the terms of this Ordinance.

APPENDIX B

JUDGMENT AND OPINION OF THE UNITED STATES DISTRICT COURT

(See page 2 of Petition, *supra.*)

APPENDIX C

JUDGMENT AND OPINION OF COURT OF APPEALS

City of East Detroit, a Municipal Corporation, et al. Appellants,

v.

Detroit Edison Company, a New York Corporation, Appellee

No. 19315.

United States Court of Appeals Sixth Circuit.

Dec. 14, 1959.

Action wherein the United States District Court for the Eastern District of Michigan, Southern Division, Arthur F. Lederle, J., rendered judgment ordering issuance of permit to construct control shelter for electric transformer station and an appeal was taken. The Court of Appeals, Per Curiam, held that, under Michigan law, Board could not rehear matter after expiration of five days, and that resolution of March 3, 1958, granting permit having become final, it was duty of Board to approve plan submitted in conformity therewith, and its rejection of plan, on May 12, 1958, and its refusal to issue building permit, were arbitrary and unreasonable.

Affirmed.

Under Michigan law, Board could not rehear matter after expiration of five days, and resolution of March 3, 1958, granting permission to construct control shelter for electric transformer station, having become final, it was duty of Board to approve plan submitted in conformity therewith, and its rejection of plan, on May 12, 1958, and its refusal to issue building permit, were arbitrary and unreasonable. Comp. Laws Mich. 1948, §125.585.

Carl B. Weymouth, East Detroit, Mich. (David Gooze, Detroit, Mich., on the brief), for appellants.

Laurence M. Sprague, Detroit, Mich. (Harvey A. Fischer, George Hogg, Jr., Detroit, Mich. on the brief), for appellee.

Before Martin, Miller and Weick, Circuit Judges.

Per Curiam

The Board of Appeals on Zoning of the City of East Detroit, on March 3, 1958, granted to the appellee permission to construct on its property in said city, a control shelter for its electric transformer station. The architectural plans therefor were to be submitted to the City Planning Consultant and the City Council for approval.

On May 9, 1958, the City Planning Consultant approved the plans submitted by appellee as conforming with the general architecture and plan of the district subject to some minor changes to which appellee agreed.

On May 12, 1958, the Board undertook to rehear the matter and passed a resolution rejecting the plans. An election had intervened resulting in some change in the composition of the Board.

Under the plain language of the zoning ordinance appellee had the right to construct, erect and

maintain its electrical transmission system without any permit as this was expressly excepted from the operation of the ordinance. The Company needed only the permit to construct the control shelter for its electric transformer station. This was an integral part of its system without which it could not be operated or maintained.

Having granted permission to construct the control shelter on March 3, 1958, the Board could not rehear the matter under Michigan law, after the expiration of five days. McVeigh v. City of Battle Creek, 1957, 350 Mich. 214, 86 N. W. 2d 279; M. S. A. §6.2835, Comp. Laws 1948 §125.385. The resolution of March 3, 1958, therefore had become final and it was the duty of the Board to approve the plans submitted in conformity therewith. Its rejection of the plans and refusal to issue the building permit was arbitrary and unreasonable.

The District Court was right in granting judgment on its findings of fact and conclusions of law in favor of appellee ordering the City to issue the permit and its judgment is, therefore, affirmed.